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7 December 1977

MEMORANDUM FOR: Director of Logistics

STATINTL

FROM:

[REDACTED]
Logistics & Procurement Law Division
Office of General Counsel

SUBJECT: National Intelligence Reorganization
and Reform Act of 1977, Title IV--
Central Intelligence Agency Act of
1977--Senate Select Committee Draft

REFERENCES: (a) Memo dtd 5 Dec 77 to D/OL fm C/PD/OL,
same subject

(b) Note dtd 5 Dec 77 to AEO/OL fm
DC/P&PS/OL, subject: Review of
Draft Intelligence Charter
Legislation

(c) Memo dtd 5 Dec 77 to D/L fm C/SD/OL,
subject: Title IV, Section 404
(OL 7 5463)

(d) RECD Comments - Rephrased (OL 7 5465)

1. The undersigned has reviewed subject proposed legislation and the comments found in references (a) through (d). The comments voice genuine concerns; particularly, with regard to the lack of property disposal authority and the unclear Public Buildings Act issue. I concur with the expressed comments. Except for purposes of clarity, I will not repeat the observations expressed in references (a) through (d) at this time.

2. It is my opinion that the proposed legislation is drafted with view towards separate individuals occupying the Director of National Intelligence (DNI) and Director of the Central Intelligence Agency (DCIA) positions. See Sec. 405(d). As long as one individual wears both hats, the approval authority required of the DNI throughout the legislation by the DCIA would be pro forma. It should be noted, however, that would

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not be true where there are two separate individuals. This would have enormous impact upon the Agency's procurement practices, since the Director of Central Intelligence (DCI), as the law currently provides, is regarded as a head of an agency with essentially the same authorities as the Secretary of Defense. The DCIA under the proposal would not have those powers and most of the flexibility would be lost that the CIA necessarily employs to accomplish its mission. The contracting officers on both sides of the house would feel this immediately.

3. Section 409 is a mixed blessing. It provides that the CIA would be fully included under the Armed Services Procurement Act. While it clarifies the legal authority for many of the Agency's procurement practices, it also means we would be restricted to the Armed Services Procurement Regulations (ASPR) by law, not to the extent practicable as is the current practice. The DCIA would have to obtain specific deviations from ASPR or its successor from the DNI. Currently, the DCI may independently waive or modify ASPR for good cause. On the other hand, chapter 139 of Title 10 United States Code does give express legislative authority to conduct research and development, a factor not found under current law. Ideally, for the CIA to insure flexibility necessary to protect our method of contracting, Section 409(a) should be revised to delete at line 12 of that provision, "with the approval of the Director of National Intelligence."

4. Moreover, it must be noted that ASPR is promulgated by DoD. The current ASPR and, hence, the ASPR committee, are being abolished and replaced by the Defense Acquisition Regulation System (DARS). This is more than mere eyewash because the chairman of the ASPR committee will be eliminated and replaced by a director. The DARS director, in essence, will have full authority to solely modify and issue new regulations, clauses and procedures. The ASPR committee members formerly had a vote. Under the new DARS proposal, which the Office of Federal Procurement Policy (OFPP) at this writing has agreed to, the DARS members will merely be advisors. Practically

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speaking, this means the procurement practices of the CIA will be dictated by DoD, a situation, hopefully, that was not consciously contemplated in the instant draft. It would be highly impractical to have the DCIA requesting deviations from ASPR/DARS on a daily basis.

5. Section 410(a)(2), amongst other matters, raises the issue concerning spending sums made available for requisition, construction and alteration of buildings and facilities without regard to the Public Buildings Act of 1959. This language, found currently in Section 8(a) of the present CIA Act, caused considerable difficulty in the renovation of the Community Headquarters Building, and the Headquarters Building in Langley. It is suggested that the precise meaning of this provision be obtained.

6. Section 410(b)(1) would require the reporting of expenditures of unvouchered funds to both committees on appropriations in the House and Senate in toto. Moreover, the Comptroller General would have the right, in accordance with Section 410(c), to review and audit all funds, not just vouchered funds, unless the latter are exempted by the DNI upon notice to the appropriate committees; the DCIA would not have the authority to grant an exemption.

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cc: P&PS/OL